STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **THE DETROIT EDISON COMPANY** for a reconciliation of Its Power Supply Cost Recovery Plan for the 12-month period ending December 31, 2009.	)	Case No. U-15677-R

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on May 31, 2011.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before June 14, 2011, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before June 24, 2011. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

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Mark E. Cummins
Administrative Law Judge

May 31, 2011
Lansing, Michigan

S T A T E O F M I C H I G A N

MICHIGAN ADMNISTRATIVE HEARING SYSTEM

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **THE DETROIT EDISON COMPANY** for a reconciliation of Its Power Supply Cost Recovery Plan for the 12-month period ending December 31, 2009.	))))))	Case No. U-15677-R

PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

On March 30, 2010, The Detroit Edison Company (Detroit Edison) filed an application, with supporting testimony and exhibits, requesting reconciliation of its power supply cost recovery (PSCR) revenues and expenses for the 2009 calendar year, pursuant to section 6j of 1982 PA 304 (Act 304), as amended, MCL 460.6j. The application further requested that the Commission approve the utility's proposal to return to all of its PSCR customers a year-end 2009 over-recovery in the amount of $15,642,519, including interest. Detroit Edison's application, p. 4. In addition, the application included a request by the company to "refund its total remaining 2005 PSCR Commercial & Industrial (C&I) class overrecovery at year-end 2009 of $125,505, including interest, to all [C&I] class customers subject to the PSCR [clause]" by way of a one-time, per customer credit. Id.

Pursuant to due notice, a prehearing conference was held in this case on May 6, 2010 before Administrative Law Judge Mark E. Cummins (ALJ). In the course of that prehearing, the ALJ granted petitions to intervene filed on behalf of the Michigan Department of Attorney General (Attorney General), the Michigan Environmental Council, and the Michigan Community Action Agency Association. In addition, the Commission Staff (Staff) entered its appearance and a schedule was established for the remainder of the proceedings.

Evidentiary hearings were conducted on December 8, 2010, during which the parties offered testimony and exhibits from a total of eight witnesses, seven on behalf of Detroit Edison and one on behalf of the Attorney General. The resultant record consists of 173 pages of transcript and 24 exhibits, each of which was received into evidence. In compliance with the previously-established schedule, initial briefs were filed by Detroit Edison, the Attorney General, and the Staff on or about January 17, 2011. In addition, those three parties submitted reply briefs on or before January 31, 2011.

II.

STATUTORY REQUIREMENTS

Subsection 6j(12) of Act 304 requires that, not less than once a year and not later than three months after the end of the 12-month period covered by a utility's PSCR plan, the Commission shall commence a PSCR reconciliation proceeding as a contested case pursuant to Chapter 4 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 et seq. In the course of that proceeding, the Commission is directed to reconcile the revenues recorded pursuant to the PSCR factor and the allowance for cost of power supply included in the base rates established in the latest Commission order for the utility, on the one hand, with the amounts actually expensed and included in the cost of power supply by the utility, on the other. This subsection further directs the Commission to consider any issue regarding the reasonableness and prudence of expenses for which customers are charged if the issue could not have been considered adequately in the course of a previously-conducted PSCR plan case.

Subsection 6j(13) of Act 304 provides that, in its PSCR reconciliation order, the Commission shall disallow, among other things: (1) cost increases resulting from changes in accounting or ratemaking expense treatment not previously approved by the Commission; (2) any capacity charges associated with power purchased for periods in excess of six months unless the utility has obtained the prior approval of the Commission; and (3) net increased costs attributable to a generating plant outage of more than 90 days in duration unless the utility demonstrates by clear and satisfactory evidence that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management.

Subsection 6j(14) of Act 304 provides that, in its PSCR reconciliation order, the Commission shall require the utility to refund to customers or credit to customers' bills any net amount determined to have been recovered during the PSCR period in excess of the amounts actually expensed for power supply, and to have been incurred through reasonable and prudent actions not precluded by the Commission in the course of its PSCR plan case order.

Subsection 6h(15) of Act 304 likewise provides that, in its PSCR reconciliation order, the Commission shall authorize the utility to recover from its customers any net amount by which the amount determined to have been collected over the period covered was less than the amount actually expensed by the utility for power supply, and which was incurred through reasonable and prudent actions not precluded by the Commission's order in the PSCR plan case. This subsection further provides that for excess costs incurred through actions contrary to the order issued in the plan case, the Commission shall authorize the recovery of costs incurred for power supply during the 12-month period in excess of the amount recovered over that period only if the utility demonstrates, by clear and convincing evidence, that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. Also, for excess costs incurred through actions consistent with the PSCR plan order, the Commission shall authorize their recovery only if the utility demonstrates that the excess costs were reasonable and prudent.

Subsection 6j(16) of Act 304 provides the methodology and calculation of interest if the Commission orders refunds or credits pursuant to subsection 6j(14) or additional charges to customers pursuant to subsection 6j(15) as part of its final order in a PSCR reconciliation.

III.

TESTIMONY AND POSITIONS OF THE PARTIES

As noted above, Detroit Edison offered direct (and in one case, at least, rebuttal) testimony from seven witnesses in support of its 2009 PSCR reconciliation. The utility asserts that this testimony, along with its related exhibits, demonstrates that the decisions and actions giving rise to its actual 2009 power supply costs were reasonable and prudent. The company therefore contends that, among other things, it should be authorized to roll into its 2010 PSCR reconciliation the total $15,642,519 over-recovery incurred during the 2009 plan year, including interest computed in accordance with section 6j(16) of Act 304. Detroit Edison also contends that its proofs support allowing it to refund $125,505 (again, including interest) to its C&I customers in order to zero-out its 2005 PSCR under-collection surcharge.

Detroit Edison's first witness was John C. Dau, Manager of the utility's Belle River Power Plant. Mr. Dau testified with regard to the company's periodic maintenance for its fossil-fuel driven power plants, as well as both the development and execution of Detroit Edison's periodic outage plan during 2009. In the course of his testimony, he explained that the company generally followed its 2009 periodic outage schedule, that all outage-related work planned for the Monroe Units 1, 3, and 4, St. Clair Units 3 and 6, Harbor Beach, and Trenton Channel High Side facilities was completed as planned, and that planned outages for River Rouge 3 and St. Clair 4 "were pulled forward from 2010 and completed in 2009." 2 Tr 25. As a result, Mr. Dau concluded that because the utility's activities during 2009 did not "cause or prolong any plant outage," and instead served to "minimize plant outage duration and maximize [both] plant availability and reliability," its actual and projected maintenance and repair work was reasonable and prudent. 2 Tr 27.

The second witness sponsored by Detroit Edison was James D. Good, a Supervisor of Fuel Quality in the utility's Operations and Logistics Group, within the company's Fuel Supply Organization. Mr. Good's testimony served to reconcile the difference between the actual unit cost of fossil fuel paid during 2009 and the corresponding expense projected for the plan year, which--he noted--was actually less than forecast. See, 2 Tr 33. For that and other reasons, he stated that Detroit Edison's 2009 fossil fuel expenses "were reasonable and the result of prudent fuel procurement practices." 2 Tr 37.

The utility's third witness was Terrance M. Hallett, the Principal Supervisor of the Accounting Gross Margin Group within Detroit Edison's Controller's Organization. The testimony and exhibits provided by Mr. Hallett served to detail Detroit Edison's booked cost of fuel consumed during the 2009 plan year, its nitrous oxide and sulfur dioxide emission allowances expended during that time period, the cost of both purchased power and network transmission, the revenue received from third-party wholesale power sales, all ancillary services revenue, and the urea-related expenses arising during the 2009 calendar year. See, 2 Tr 42-48. In the course of that testimony, he noted that the utility's total nuclear fuel expense for the year in question totaled $37,637,915, which reflects both "front-end amortization" and all related "regulatory costs." 2 Tr 48.

Detroit Edison's fourth witness was Kelly A. Holmes, who works within the company's Regulatory Affairs Division as a Principal Financial Analyst--Regulatory Economics. Through her testimony and exhibits, Ms. Holmes reconciled Detroit Edison's 2009 PSCR revenues and expenses, and further reconciled the utility's recovery of its 2005 C&I customer PSCR reconciliation surcharge. See, 2 Tr 53-67. With regard to the first of these issues, Ms. Holmes testified that the over-recovery for "all of the company's PSCR customers at year-end 2009 is $15,642,519, which includes interest of $4,705,317." 2 Tr 64-65 (citing Exhibit A-9, line 56). As for the second issue she addressed, Ms. Holmes noted as follows:

> As of December 31, 2009, there was an outstanding liability related to the 2005 PSCR overrecovery of $125,505. Refunding this amount to all [C&I] customers on a per kWh basis would be impractical. Thus, the Company proposes that it refund this amount equally to each [C&I] customer subject to the PSCR. Exhibit A-11 develops the calculated total refund amount depending on the month of the Commission's order in this proceeding, reflecting interest for both 2009 and 2010 being compounded annually. The company proposes that the appropriate refund amount will be refunded on an equal basis to all C&I PSCR customers active in the Company's billing system in the month following a Commission Order in this proceeding.

2 Tr 67.

The fifth witness offered by Detroit Edison was Michael W. Shields, Manager--Wholesale Market Developments, in its Regulatory Affairs Division, who explained the utility's 2009 expenses arising from being a network transmission customer in the International Transmission Company (ITC) zone, as well as being a market participant in the energy and ancillary services markets administered by the Midwest Independent Transmission System Operator (MISO). See, 2 Tr 73. According to Mr. Shields, those expenses were "required for the Company to serve its full service bundled customers." Id. He further provided testimony indicating that all of the utility's transmission-related expenses associated with the ITC and MISO (and which were specifically listed on Exhibits A-12 and A-13) "were necessary and integral" to Detroit Edison's being able to serve those customers, were prudently-incurred, and reflected the precise cost levels previously set by the Federal Energy Regulatory Commission. 2 Tr 97.

The Company's sixth witness was Angela P. Wojtowicz, Supervisor of the Midterm Optimization Group in the Generation Optimization Department of Detroit Edison's Regulated Marketing Organization. Ms. Wojtowicz described the utility's 2009 electric system operations, including the company's system generation, third-party wholesale power purchases and sales, emission allowance expenses, and incremental urea expenses. See, 2 Tr 102. Based on her analysis, she testified that Detroit Edison's electric system was operated "in a reliable, reasonable, and prudent manner" throughout 2009. 2 Tr 114. Ms. Wojtowicz's conclusion in this regard was based, among other things, on the fact that: (1) there were no interruptions of customer load due to either generation supply or transmission limitations; (2) the utility's average generation unit fuel cost during the year in question was only $30.74 per megawatt-hour (MWh), which was $13.61 per MWh less than the average MISO day-ahead price for power at the Michigan Hub; (3) the company made nearly 5,156 gigawatt-hours of third-party wholesale power sales with associated gross revenues of over $160 million, thus reducing PSCR customers' overall costs; and (4) at no time during the summer peak did Detroit Edison have to require its industrial interruptible customers to curtail their interruptible load. See, 2 Tr 114-115.

The utility's final witness was Kenneth D. Johnson, who is employed by DTE Energy Corporate Services LLC, and works within its Regulatory Affairs Division as a Regulatory Consultant. As opposed to the company's other six witnesses, who each provided direct testimony, Mr. Johnson sponsored rebuttal testimony in response to a proposal (offered by the Attorney General's witness) to limit the transfer price assigned to any renewable energy and capacity that is included in Detroit Edison's annual PSCR expense to the lower of either the actual cost of that energy and capacity or the Locational Marginal Price (LMP) for electricity. See, 2 Tr. 125. Contrary to that proposal, Mr. Johnson testified that prior Commission orders support finding that the per MWh price at which renewable energy is transferred to the PSCR process must actually reflect the lower of either (1) the transfer price that is approved by the Commission for each individual renewable energy contract, or (2) the actual price of the renewable energy obtained under each such contract. See, Id.

Based on the testimony provided by these seven witnesses, Detroit Edison contends that the Commission should find that the utility "operated its system and incurred all PSCR costs in a reasonable and prudent manner" throughout 2009. Detroit Edison's initial brief, p. 10. The company further contends that, consistent with the rebuttal testimony offered by Mr. Johnson and prior orders concerning transfer pricing, the Commission must reject the Attorney General's proposal to apply a different cost allocation methodology for renewable energy and capacity than previously approved. See, Id., at p. 14. For these reasons, Detroit Edison asserts that the Commission should approve the utility's requested PSCR reconciliation in its entirety.

The Attorney General offered testimony from a single witness in this proceeding, namely Michael J. McGarry, Sr., President and Chief Executive Officer for Blue Ridge Consulting Services, Inc. In the course of his testimony, Mr. McGarry expressed "significant concern with respect to the transfer price for renewable energy" that is being included as part of Detroit Edison's overall PSCR costs. 2 Tr 142. According to him:

> [T]he transfer price for renewable energy resources included in PSCR expense for each PSCR reconciliation should reflect the lower of the actual cost under the related renewable energy power purchase

agreements or the reasonable-and-prudent, economically-dispatched, LMP price for electricity.

2 Tr 143. According to Mr. McGarry, this conclusion was based on two factors. First, he believed that "a utility should not recover more under [Act 304] or under 2008 PA 295, MCL 460.1001 et seq., (Act 295 or the Act)[1] than the costs it actually incurred for renewable energy delivered." Id. Second, while recognizing that Act 295 requires the utility to satisfy minimum renewable portfolio standards, he expressed the belief that "only actual renewable energy costs up to the available, alternative, and more economic energy resources" should be transferred for collection via the PSCR process, and that "the cost, if any, of renewable energy resources that exceeds the economic dispatch cost" should, instead, be recovered through application of any renewable energy surcharge imposed by the utility. 2 Tr 144. Mr. McGarry thus concluded by asserting that, instead of the company's suggested transfer price of $49.60 per MWh, Detroit Edison's actual 2009 average LMP of $27.31 per MWh should be used to calculate the cost of renewable energy, thus reducing the utility's 2009 PSCR expense by $96,069.43.

Consistent with Mr. McGarry's testimony, the Attorney General asserts that the utility's request to recover $200,611 of renewable energy-based costs by way of the PSCR process should be rejected. Instead, he contends that (as proposed by his witness) the total amount of renewable energy expense included in Detroit Edison's

[1] As noted in Section 1 of that statute, the purpose of Act 295 is to promote the development of clean and/or renewable energy, as well as energy optimization, through the implementation of a clean, renewable, and energy efficient standard that will serve to diversify the resources used to meet the state's energy needs, provide for greater security via the use of indigenous energy resources found within the state, encourage investment in renewable energy and energy efficiency, and provide improved air quality. See, MCL 460.1001(2). Moreover, Sections 45, 47, and 49 of the Act serve to provide a means for utilities to establish and recover the incremental cost of compliance with the mandates imposed by Act 295. See, MCL 460.1045, MCL 460.1047, and MCL 460.1049.

2009 PSCR expense should be reduced by $97,096.43, thus increasing the utility's reported over-recovery by the same amount. See, Attorney General's initial brief, p. 8.

Although offering no witnesses of its own in this proceeding, the Staff contends that the Attorney General's proposal with regard to the appropriate transfer price to apply in this case should be rejected. Specifically, it contends that the transfer price actually applied by Detroit Edison is "consistent with the Commission's past decisions and applicable statutory language." Staff's initial brief, p. 4. Although recognizing the Attorney General's concerns in this regard, the Staff "believes that it is necessary to have an established transfer price" (as opposed to a price that is only set following the close of the year in question) so that the Company "has the ability to fulfill its obligations under [the Act] while staying within the statutory prescribed surcharge limits[2]." Id., p. 6. According to the Staff, although Act 295 "provides for recovery of the transfer price through the PSCR," it fails to incorporate any process "to modify the transfer price in a PSCR proceeding" such as this. Id. As a result, the Staff supports issuing a PFD that adopts the utility's proposed PSCR reconciliation.

IV.

DISCUSSION AND FINDINGS

Evidence presented by Detroit Edison indicates that, for the 12-month period at issue, the utility collected $1,148,151,872 in PSCR revenues and allocated to its PSCR clause total costs in the amount of $1,121,579,436. Exhibit A-9, p. 2, lines 35 and 46.

[2] Pursuant to Section 45 of Act 295, utilities' "recovery of the incremental cost of compliance" with the Act's provisions shall not exceed $3.00 per month for each residential customer, $16.58 per month for any commercial secondary customer, and $187.50 per month for either a commercial primary customer or an industrial customer, all on a per meter basis. MCL 460.45(2).

When adjusted for interest through the close of the plan year, the company's alleged net PSCR over-recovery totals $15,642,519. Id., at line 56. The record further reflects that an outstanding liability in the amount of $125,505 remains from Detroit Edison's 2005 PSCR over-recovery, which the utility seeks to refund (on an equal, per-customer basis) to each and every C&I customer that is currently subject to the company's PSCR process. 2 Tr 67.

The only active dispute in this matter stems from the Attorney General's assertion that the Commission should adopt what Detroit Edison and the Staff both contend is a revised policy regarding the transfer price applied to all renewable energy and capacity included in a utility's PSCR expense. Specifically, the Attorney General asserts that, as suggested by Mr. McGarry:

> The price used by [Detroit Edison] to report PSCR expense for renewable energy costs should be reduced to the applicable LMP prices unless approved actual renewable energy contract prices fall below those actual prices. In that case, the lower actual prices should be included in the renewable expense calculation. The result of [this] analysis shows that the renewable energy expense [included in Detroit Edison's 2009 PSCR costs] should be lowered by $97,096.43.

2 Tr 154-155. According to the Attorney General, recovery of the excluded costs (which Mr. McGarry estimated to be any amount above $27.31 per MWh) should occur, if at all, in the context of a "renewable energy reconciliation as an incremental cost of compliance" with Act 295. Attorney General's reply brief, p. 8. To do otherwise, he contends, would "[nullify] application of the reasonableness-and-prudence-limit upon recoverable PSCR expense established by MCL 460.6j" and "[evade] any scrutiny regarding reasonableness and prudence under MCL 460.1047 and MCL 460.1049." Id., p. 9.

In contrast, and as noted above, Detroit Edison and the Staff each contend that applicable statutes and prior Commission orders support finding that the per MWh price at which renewable energy is transferred to a utility's PSCR process should not be limited to the MISO-based LMP. See, Detroit Edison's reply brief, pp. 8-10; Staff's initial brief, pp. 4-6. To find otherwise, they assert, would conflict with both the language and the intent of Act 295, while also ignoring Commission rulings dealing expressly with this issue. See, Id. Furthermore, they claim that a careful analysis of Act 295 makes it clear that "the transfer price should not be modified in a PSCR proceeding'" such this. Staff's reply brief, p. 2.

The ALJ agrees with the utility and the Staff, and finds that the Attorney General's arguments with regard to the appropriate transfer price to be applied in the context of this PSCR proceeding must be rejected. This finding is based upon the following three factors.

First, the Attorney General's claim that the transfer price to be applied in PSCR proceedings must effectively be limited to the LMP conflicts with the specific provisions, as well as the overall intent, of Act 295. Section 47 of Act 295 allows the utility to recover the incremental cost of all renewable energy purchased in accordance with the Act's requirements, and further requires a portion of those costs to be recovered through the utility's PSCR process. See, MCL 460.1047. Of that Section, the most salient language with regard to this issue is that found in subpart (2)(b)(iv), which provides, in pertinent part, that:

> After providing an opportunity for a contested case hearing for an electric provider whose rates are regulated by the commission, the commission shall annually establish a price per megawatt hour. In addition, an electric provider whose rates are regulated by the commission may at any time

> petition the commission to revise the price. In setting the price per megawatt hour under this subparagraph, the commission shall consider factors including, but not limited to, projected capacity, energy, maintenance, and operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing. This price shall be multiplied by the sum of the number of megawatt hours of renewable energy and the number of megawatt hours of advanced cleaner energy used to maintain compliance with the renewable energy standard. The product shall be considered a booked cost of purchased and net interchanged power transactions under section 6j of 1939 PA 3, MCL 460.6j. <u>For energy purchased by such an electric provider under a renewable energy contract or advanced cleaner energy contract, the price shall be the lower of the amount established by the commission or the actual price paid and shall be multiplied by the number of megawatt hours of renewable energy or advanced cleaner energy purchased</u>. The resulting value shall be considered a booked cost of purchased and net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.

MCL 460.1047(2)(b)(iv) [emphasis added]. In past orders, the Commission has labeled this price the "transfer price." Moreover, Section 49 of Act 295 provides that the Commission must, at least in the case of regulated utilities like Detroit Edison, also review that price in the context of the utility's annual renewable energy plan's cost reconciliation proceedings. <u>See</u>, MCL 460.1049(3)(c). Read together, Sections 47 and 49 of the Act clearly indicate that the lowest level at which a utility's transfer price can be set is the lower of the amount previously established by the Commission in the course of a utility's renewable energy plan process or the actual price paid by the utility.

Moreover, pre-approval of a specific transfer price (as opposed to setting the price following the end of the period in question, as the Attorney General would have the Commission do) better comports with the overall intent of Act 295. As noted by the Staff, approving a set transfer price in advance "provides the Company with a known number for planning its renewable energy resource procurement" required by the Act. Staff's initial brief, p. 5. This, the Staff further notes, "helps mitigate the risk associated with a fluctuating LMP market," and in turn increases "the Company's ability to implement the goals" of Act 295. Id. It must therefore be concluded that the pre-set price established in the course of Detroit Edison's renewable energy plan process, and not the subsequently-determined LMP, is the appropriate floor for a utility's transfer price.

Second, prior rulings by the Commission expressly support reaching such a conclusion. For example, in the course of the Commission's August 25, 2009 order in Case No. U-15806 (which involved a review of Detroit Edison's request for proposals regarding the potential supply of renewable electric capacity and energy), it was stated that:

> The Staff similarly asserts that there is no merit to the Attorney General's argument that the Commission lacks authority to establish transfer prices as a floor. Nevertheless, the Staff notes that while the June 2, 2009 order in this case, and the December 4, 2008 order in Case No. U-15800, addressed certain aspects of the transfer price, the issue of how the transfer price is to be used in the case of a third-party [purchase power agreement, or PPA] has not been specifically addressed. <u>The Staff therefore urges the Commission to clarify that at the time any PPA is approved by the Commission, the schedule of transfer prices most recently approved shall become the floor price for PSCR recovery.</u> For each contract year, if the most recently approved annual transfer price is higher than the schedule of transfer prices for a particular contract, then the most recently approved annual transfer price would be recovered via the PSCR process. However, in the event that the contract price is less than the transfer price, the contract price would be the recoverable PSCR cost. This method would be applicable to renewable engineering, procurement, and construction contracts, or contracts for renewable energy systems that have been deployed by third parties for transfer of ownership to an electric provider, provider-owned projects, and third party PPAs.
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> <u>The Commission agrees with the Staff's clarification and adds that it appears that the Attorney General fundamentally misunderstands the concept and operation of the transfer price in renewable energy</u>

> <u>procurement.</u> Pursuant to Section 47(2)(b) of Act 295, the Commission is required to annually set a transfer price for renewables costs that will flow through the company's PSCR. The transfer price is simply a mechanism for estimating and allocating the reasonable and prudent costs for renewable energy between the PSCR and the [Renewable Energy Plan] surcharge, whether these costs are associated with renewable self-build projects, projects that are built by third-parties and transferred to the utility, or PPAs. As with any other PPA for electric power, ratepayers pay the reasonable and prudent costs set forth in the contract approved by the Commission and no more. There is no reason to view a PPA for renewable energy in any different fashion than, for example, the request by Consumers Energy Company for approval of a 20-year PPA for the purchase of nuclear power. <u>See</u>, March 27, 2007 [order] in Case No. U-14992. <u>The primary reason for setting the transfer price schedule as a floor for any project or PPA is to provide the utility with a means of planning its renewables acquisition program to meet its renewable portfolio targets without exceeding the caps on the surcharge defined in Act 295.</u>

August 25, 2009 order in Case No. U-15806, pp. 11-12 [emphasis added]. Thus, because the Commission approved both the Detroit Edison/Heritage Renewable Energy contract amendment and its related transfer price schedule by way of its December 1, 2009 order in Case No. U-15806, the corresponding transfer price set forth in that schedule serves as the floor for the period in question (which is, by the way, the base price used in this PSCR proceeding). <u>See</u>, 2 Tr 129-130.

Third, it would seem wholly inappropriate to modify a previously-established transfer price in the context of a PSCR reconciliation such as this. Act 295 explicitly indicates that the transfer price--as determined in a utility's renewable energy plan process--is to be deemed "a booked cost of purchased and net interchanged power transactions," and thus recoverable through the utility's PSCR clause. MCL 460.1047(2)(b)(iv). Moreover, the Act specifically identifies only two proceedings in which the transfer price may be established. One is the utility's renewable energy plan case where, pursuant to subsection 47(2)(b)(iv) of Act 295, the Commission is to set the company's overall transfer price schedule. The other is the utility's renewable energy reconciliation case, where the Commission is called upon to determine the transfer price to be applied to the period in question, as directed by subsection 49(3)(c) of the Act. Those two provisions, when considered in conjunction with the fact that nowhere does Act 304 mention either establishing or adjusting the transfer price for renewable energy, support the Staff's contention that a PSCR case is not the appropriate venue for attempting to adjust a utility's transfer price. See, Staff's reply brief, p. 3.

In light of the factors described above, the ALJ finds that the Attorney General's request to drop Detroit Edison's transfer price to the LMP, and thus reduce the total amount of renewable energy expense included in the utility's 2009 PSCR costs by $97,096.43, should be rejected. It is therefore recommended that the Commission approve Detroit Edison's application without revision.

V.

CONCLUSION

Based upon the foregoing, the ALJ recommends that the Commission issue an order (1) approving Detroit Edison's request to reconcile its 2009 PSCR revenues and expenses, (2) authorizing the utility to roll over to its 2010 PSCR reconciliation an over-recovery in the amount of $15,642,519, including interest, and (3) allowing the company to refund--on an equal, per-customer basis to each and every C&I customer that is currently subject to its PSCR process--an outstanding liability in the amount of $125,505, which remains from an over-recovery related to Detroit Edison's 2005 PSCR reconciliation.

Finally, it should be noted that any arguments not specifically addressed in this PFD are either rejected or have been deemed irrelevant to the ALJ's ultimate findings and conclusions.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

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Mark E. Cummins
Administrative Law Judge

May 31, 2011
Lansing, Michigan
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